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Grant Thornton LLP

**UNITED STATES BANKRUPTCY COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, NORTHERN DIVISION**

In re

CHANNEL TECHNOLOGIES GROUP,  
LLC,

Debtor.

CORPORATE RECOVERY ASSOCIATES,  
LLC, as Trustee for the Liquidating Trust of  
Channel Technologies Group, LLC,

Plaintiff,

v.

GRANT THORNTON, LLP,

Defendant.

Case No. 9:16-bk-11912-DS

Chapter 11

Adv. No. Case No. 9:18-AP-01058-DS

**DEFENDANT GRANT THORNTON'S  
OPPOSITION TO PLAINTIFF'S  
MOTION TO SEVER AND  
CONSOLIDATE DEFENDANT GRANT  
THORNTON'S POST PETITION  
CLAIMS**

Date: July 23, 2019

Time: 1:00 p.m.

Place: Courtroom 201  
United States Bankruptcy Court  
1415 State Street  
Santa Barbara, CA 93101

1 **TO THE HONORABLE DEBORAH J. SALTZMAN, UNITED STATES BANKRUPTCY**  
2 **JUDGE, PLAINTIFF AND ITS COUNSEL OF RECORD:**

3 **PLEASE TAKE NOTICE THAT** Defendant Grant Thornton LLP (“Defendant”) hereby  
4 submits the following Opposition (“Opposition”) to the Motion to Sever and Consolidate  
5 (“Motion”) filed by Corporate Recovery Associates, LLC, as Trustee for the Liquidating Trust of  
6 Channel Technologies Group, LLC (“Plaintiff”).

7 **I. INTRODUCTION AND SUMMARY OF FACTS**

8 Plaintiff has filed two separate adversary proceedings against Defendant. The first, (No.  
9 9:18-AP-01058-DS), is the one in which Plaintiff has filed this Motion (“First Action”). The First  
10 Action sought: (1) Avoidance of Actual Fraudulent Transfers Under 11 U.S.C. §548(a)(1)(A) and  
11 550(a); (2) Avoidance of Constructive Fraudulent Transfers Under 11 U.S.C. § 548 (a)(1)(B); (3)  
12 Actual Fraud; (4) Constructive Fraud; (5) Unjust Enrichment; and (6) Conversion. Plaintiff and  
13 the multiple defendants in the First Action filed motions to dismiss on the bases that Plaintiff  
14 failed to properly allege any fraud-based claims against the Defendants and failed to identify any  
15 specific dates for pre- or post-petition transfers. The Court granted the motions to dismiss the  
16 First Action, granting Plaintiff leave to amend by June 28, 2019.

17 On April 18, 2019, Plaintiff then filed its second adversary action (No. 9-19-ap-01019-  
18 DS) (“Second Action”) to avoid and recover five allegedly unauthorized post-petition transfers to  
19 Defendant occurring on February 8, 2017, March 2, 2017, March 15, 2017, April 20, 2017 and  
20 April 26, 2017 pursuant to 11 U.S.C. §544(b)(1) and Cal.Civ.Code §3439.

21 On May 21, 2019 Defendant filed its motion to dismiss Plaintiff’s Second Action on the  
22 basis that the Second Action is time-barred since three of the five transactions occurring on  
23 February 8, 2017, March 2, 2017, and March 15, 2017 were made more than two years before the  
24 Second Action was filed on April 18, 2019; the applicable statute of limitations allows two years  
25 from the date of the contested post-petition transfer.

26 On June 11, 2019, Plaintiff filed a first amended complaint in the Second Action.  
27 (“FAC”).

28 On June 18, 2019, Plaintiff filed the instant Motion to sever and consolidate the five post-

petition transfers that were never identified in the First Action with the Second Action that belatedly alleged the post-petition transfers.

Then, on June 28, 2019, Plaintiff filed a second amended complaint (“SAC”) in the First Action identifying the same five post-petition payments allegedly made to Defendant on February 8, 2017, March 2, 2017, March 15, 2017, April 20, 2017 and April 26, 2017 *that it had failed to identify in the First Action*. Per the Court’s Order granting Defendant’s motion to dismiss the First Action, Defendant’s response is due August 2, 2019. Note that none of these alleged payments are alleged to have occurred before the October 2016 petition.

The instant Motion to sever and consolidate the post-petition claims of the First Action with the Second Action is a back-door attempt for Plaintiff to circumvent the fact that the Second Action against Defendant is time-barred, for the reasons stated in Defendant’s Reply in support of its motion to dismiss the Second Action. By the same token, the idea of severing and consolidating the First Action with the Second Action seeks to sever claims that were not alleged in the First Action when the Second Action was filed. The First Action deals with pre-petition payments while the Second Action deals with post-petition payments. No claims for relief in the First Action alleged post-petition payments. Despite Plaintiff’s legal maneuvering, there is nothing to sever.

Both the instant Motion to sever the post-petition payments from the First Action and Defendant’s Motion to Dismiss the Second Action are set for hearing on the same date.

## **II. ARGUMENT**

### **A. The Second Action Does Not Relate Back To The First Action.**

Plaintiff claims the Second Action relates back to the First Action because the First Action “encompasses” the post-petition payments “through March 15, 2017” - the same post-petition payments that are barred under the two-year statute of limitations in the Second Action. Plaintiff touts the notions of “convenience and fairness” in support of its request that the Court sever the three post-petition claims under Federal Rule of Civil Procedure 21. Neither convenience nor fairness are served by granting this Motion. As demonstrated by the facts above, the Motion is nothing but an attempt to manipulate Plaintiff’s defectively plead claims so as to save the three

1 transfers that are time barred.

2       Significantly, Plaintiff disingenuously fails to advise the Court that the First Action never  
3 identified the three, time barred transfers at issue. It wasn't until after Defendant filed its Motion  
4 to Dismiss the Second Action based upon the statute of limitations on May 21, 2019 that Plaintiff  
5 concocted the notion of filing the Motion in a misguided attempt to piggy back its time barred  
6 claims onto the First Action. There is no reason to allow Plaintiff to misuse the judicial system to  
7 resuscitate its time barred claims. Any "overlap" between the First and Second Action is a fiction  
8 that the Court should not condone.

9 **B. CONCLUSION**

10       For the reasons set forth herein and in Plaintiff's reply in support of its motion to dismiss  
11 the Second Action, Plaintiff's Motion to sever and consolidate should be denied. Plaintiff did not  
12 file the Second Action until April 18, 2019, after the bar date dictated by 11 U.S.C. section 549(d),  
13 two years after the February 8, March 2, and March 15, 2017 transactions. At the time Plaintiff  
14 filed this Motion, there was nothing to sever or consolidate; its First Action failed to identify any  
15 pre or post-petition transactions. It was not until Defendant advised Plaintiff that its claims were  
16 time barred did it employ the legal maneuvers to save its defective claims. Accordingly, the Court  
17 should deny the Motion.

18 DATED: July 9, 2019

SKLAR KIRSH, LLP

19  
20 By:



21 Ian Landsberg

22 Attorneys for Defendant Grant Thornton LLP  
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**PROOF OF SERVICE**

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: *1880 Century Park East, Suite 300, Los Angeles, California 90067.*

A true and correct copy of the foregoing document described as “**DEFENDANT GRANT THORNTON’S OPPOSITION TO PLAINTIFF’S MOTION TO SEVER AND CONSOLIDATE DEFENDANT GRANT THORNTON’S POST PETITION CLAIMS**” will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner indicated below:

**I. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING**

(“NEF”) (Pursuant to controlling General Order(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF and hyperlink to the document. On **January 9, 2019**, checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the email address(es) indicated below:

- Keith Patrick Banner kbanner@greenbergglusker.com, sharper@greenbergglusker.com; calendar@greenbergglusker.com
- Peter J Benvenuti pbenvenuti@kellerbenvenuti.com, pjbenven74@yahoo.com
  - Jonathan Boustani jboustani@btlaw.com
- Cheryl S Chang Chang@Blankrome.com, Hno@BlankRome.com
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- Christopher O Rivas crivas@reedsmith.com, chris-rivas-8658@ecf.pacerpro.com
- Howard Steinberg steinbergh@gtlaw.com, pearsallt@gtlaw.com; laik@gtlaw.com
  - United States Trustee (ND) ustpreion16.nd.ecf@usdoj.gov

**III. SERVED BY PERSONAL DELIVERY, FACSIMILE TRANSMISSION OR EMAIL**

(indicate method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on **January 9, 2019**, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on the judge will be completed no later than 24 hours after the document is filed.

United States Bankruptcy Court  
Central District of California  
255 E. Temple Street, Suite 1634 / Courtroom 1639  
Los Angeles, CA 90012  
Honorable Deborah J. Saltzman

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

January 9, 2019  
Date

Yesennia Alarcon  
Type Name

/s/ Yesennia Alarcon  
Signature